

REMARKS

This application is amended to clarify the indefinite recitation previously presented.

The Amendment is not believed to raise any new issues or require further consideration and/or search. Entry and consideration of the amendment is respectfully requested.

**Status of the Claims**

Claims 1, 3-6, 8, 10, 11, 17-21 and 29-31 are amended for clarity.

Claims 1, 3-12, 17-22 and 28-31 remain in this application.

**Claim Rejections-35 USC §112**

Claims 3, 4, 6-11, 17-22 and 29-31 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite. This rejection is respectfully traversed for the reasons below.

In claim 3, the phrase "the discontinuous phase" was considered confusing for not reciting "cross-linked rubber discontinuous phase" as claimed in claim 1. Claim 3 has been amended to correspond to the language of claim 1.

In claim 4, the phrase "the rubber" was considered confusing as claim 1 recites the "cross-linked rubber discontinuous phase". Claim 4 is amended in manner similar to claim 1.

In claim 6, the term "different" was considered unclear. Although broad, this term is not indefinite. The TPEs of the two portions are merely different. One example of such a difference is given in claim 10, which has also been amended to better correspond to the claim 6 from which it depends.

In claim 8, the phase "< 0,20" was considered confusing. This European notation has been amended in a manner consistent with American decimal notation.

In claims 17-20 and 29-31, the phrase "material or combination of materials" was considered confusing. As the general term "material" or "combination of materials" is recited in the independent claims, these claims have been amended to correspond to the materials remain: TPE. This amendment is supported by the original claims, as well as the general teaching of the specification.

Claim 21 was rejected for reciting both "sleeve (24)" and "teat receiving flexible sleeve". The claim has been amended to clarify that the sleeve (24) is indeed a teat receiving flexible sleeve as generally defined throughout the specification, e.g., lines 34 and 35 of page 2.

Therefore, the claims are now believed to be definite, and withdrawal of the rejection is respectfully requested.

**Claim Rejections-35 USC §103**

Claims 1, 3-12, 17-22, and 28-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over MILLS U.S. 4,572,106 (MILLS) in view of THOMSON et al. US 2005/0058796 (THOMSON). This rejection is respectfully traversed for the reasons below.

MILLS was offered for teaching a milking device with a teat receiving flexible sleeve having at least a portion comprising polyvinyl chloride, or plasticized PVC.

As acknowledged in the Official Action, the milking device of MILLS does not comprise a teat receiving flexible sleeve, adapted to be positioned on/over a teat, having at least a first portion including a thermoplastic vulcanisate (TPV) comprising a thermoplastic continuous phase and a cross-linked rubber discontinuous phase, as recited in independent claim 1. MILLS also fails to disclose or suggest a first portion of the sleeve comprising thermo-plastic elastomers (TPE), as recited in independent claim 6 or a teat receiving flexible sleeve having at least a first portion including thermo-plastic elastomers (TPE), as recited in independent claim 21.

THOMSON was offered for remedying at least these above identified deficiencies for reference purposes.

However, THOMSON does not qualify as prior art.

THOMSON has a filing date of September 12, 2003.

The present application, as indicated in the Application Data Sheet, is a National Stage of PCT/SE2003/002024

filed December 19, 2003, which claimed priority to Swedish Application 0203871-9 filed December 20, 2002. This Swedish priority document was provided with the filing of the present application, and the priority document is in English.

Accordingly, the claim to priority has been perfected in the present application, and THOMSON is not prior art.

Therefore, as acknowledged in the Official Action, MILLS alone is unable to render obvious the present claims, and withdrawal of the rejection is respectfully requested.

#### **Double Patenting**

Claims 1, 3-12, 17-22 and 28-31 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 11/597,716. This rejection is respectfully traversed.

The analysis offered in the Official Action was that the co-pending claim 1 is anticipated by the present claim 1. However, this analysis is incorrect for the basis of rejection of the present claim in view of the co-pending claim.

Indeed, while the scope of the co-pending claims may be broad enough to encompass the present claims, e.g., as a genus claim would encompass a species claim, the Official Action must provide evidence that the present claims are rendered obvious by the broad claims. This is addressed in MPEP 2144.08.

Given only the claims as guidance, there is no suggestion of the specific TPE of claim 1 or specific structures of claims 6 and 21. Therefore, withdrawal of the rejection is respectfully requested.

Moreover, it is believed that the other rejections stated in the Official Action have been overcome for the reasons given above.

As stated in MPEP 804 I B:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications.

As further noted in 1, first paragraph under MPEP 804 I B:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

### **Conclusion**

In view of the amendment to the claims and the foregoing remarks, this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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